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IPR Infringement Study

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Agricultural Situation

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Report Highlights:

Exporters Beware! Recent field research confirms that IPR protection in China for U.S. food and agriculture imports remains seriously lacking, especially for fresh fruit, dried fruit and nuts, beverages, and packaged food. In some segments, more than one-third of all goods experience IPR infringements or contain misleading country-of-origin information. Addressing IPR infringement is a critical step for U.S. exporters when entering the Chinese market, protecting brand value and building and retaining customers.

Executive Summary:

From November 2009 to March 2010, the Foreign Agricultural Service investigated the Intellectual Property Rights (IPR) protection of U.S. food and agricultural products conducted in China [1]. This field research confirmed that IPR protection in China for U.S. food and agriculture imports is seriously lacking, especially for fresh fruit, dried fruit and nuts, beverages, and packaged food. This on-the-ground research supports the conclusion that addressing IPR infringement is a critical first step for U.S. exporters entering and working in China.

Top 4 Conclusions:

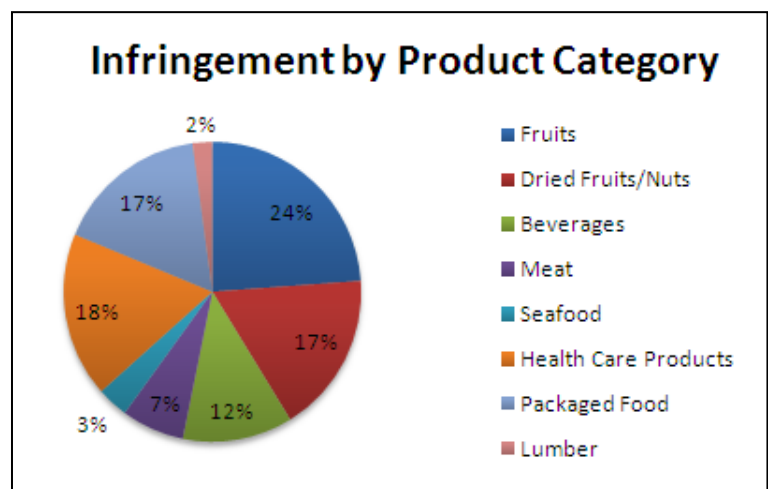
- **Location, Location, Location:** Wholesale and wet markets showed vastly higher rates of infringement than established retail outlets.
- **Misleading Claims:** Misleading claims are the most common problem but limited legal recourse exists. Marketing strategies should focus on educating consumers about this and other IPR issues. Consumers in China are discerning, but need education about what is genuine.
- **Valuable Trademarks Targeted:** Any brand or trademark, Chinese or foreign owned, that has value and has high consumer recognition is at greater risk. Unregistered trademarks or those whose owners provide limited legal support face the greatest danger
- **Most At Risk U.S. Products:** Fresh fruit, packaged foods, beverages, dried fruit and nuts

[1] The field research for this report was conducted by M.Z. Marketing Communications Co., Ltd., Mabel Zhuang, Director

Field Research Overview

Fresh Fruit Most at Risk

The field study found various types of infringement of U.S. agricultural/food products and different levels of infringement by product type and market type. Based on the total number of infringements identified, fresh fruit was the most frequently infringed product, accounting for one quarter of identified infringements. Health supplement products (18%), packaged food products (17%), dried fruits and nuts (17%), and beverages (12%) were also under serious threat of infringement. The research showed that meat (7%), seafood (3%), and lumber (2%) had relatively lower rates of infringement.

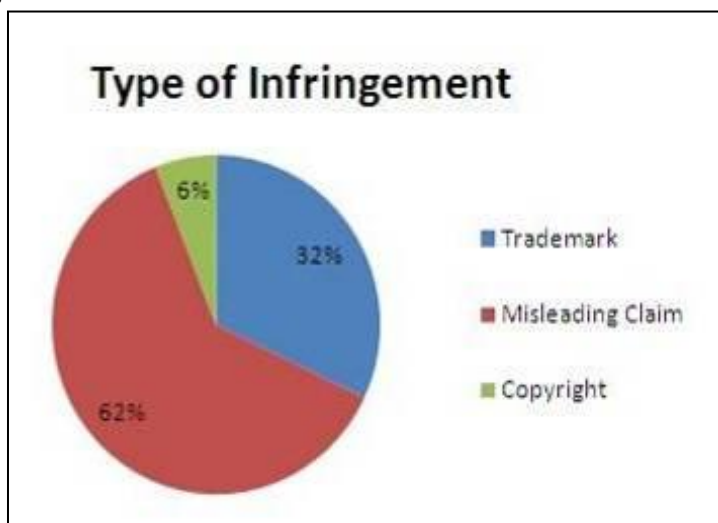


[1] The field research for this report was conducted by M.Z. Marketing Communications Co., Ltd., Mabel Zhuang, Director

Misleading Claims Most Common Problem

Types of infringements observed included trademark infringements, misleading claims about product origin, and copyright infringement. The direct infringement of registered U.S.-owned intellectual property accounted for 32% of identified infringements. Trademark infringement was most severe for fresh fruits, alcohol, and packaged food products, typically in the form of counterfeit labeling and packaging. Infringements included some of the most famous U.S. consumer brands such as Sunkist, Washington Apples, Jack Daniel's, Jim Beam, and Tabasco.

Sixty-two percent of the infringement issues fell into the category of misleading claims, which include various labeling and advertising practices designed to intentionally mislead or confuse consumers into believing they are paying a premium for U.S. products. Misleading claims have a much less clear path to legal recourse. A small percentage of infringements were copyright infringements, mostly in which promotional materials included unauthorized technical information from U.S. industry associations.



Labeling and Packaging Heart of the Deception

The most common IPR violation method was counterfeit labeling and packaging, which accounted for 65% of the total infringements identified by method. Fifteen percent of the IPR problems fell into the sub-category of misleading product names, while 12% of violations involved misleading advertising.

Product Sold in a Wholesale Market? Beware!

Wholesale markets accounted for only 35% of the investigated outlets, but were the source of 65% of the identified violations. Further research indicates nearly all counterfeit food product seizures by local Administration of Industry and Commerce (AIC) are at wholesale markets. Therefore, there appears to be ample evidence that the wholesale market is the most common sales and distribution point for infringing products. Supermarkets accounted for 58% of the outlets investigated, but only 29% of the product violations were found in these stores. Additionally, the IPR problems at established retail outlets were less system and less damaging than at wholesale/wet markets. Comparatively speaking, then, supermarkets have relatively fewer IPR issues than wholesale markets and wet markets due to stronger AIC regulations and monitoring. While very few U.S. products are sold at wet markets, other than chicken feet, U.S. IPR infringements are prevalent at the small fruit stores that are common in the vicinity.

Note: Annex 3 contains additional information about the methodology behind this survey.

Field Research Summary: Types and Common Methods of IPR Infringement

Various types of infringements are commonly found in Chinese retail and wholesale markets. The most common infringements found in this research were classified into three categories: infringements of a registered trademark, misleading claims, and copyright violations.

Direct infringements of registered US IP accounted for 32% of the infringements identified in this field study. However, 62% of infringements include claims designed to intentionally mislead or confuse consumers. Not all misleading claims infringe on registered IP because the product names they use are not registered trademarks or are not eligible for trademark registration. However, such misleading claims may result in damage to U.S.-originated products. A small percentage of infringements involve copyright infringement, mainly in the form of plagiarizing technical information from U.S. industry associations for Chinese company promotional materials.

A. Infringement of registered US trademarks

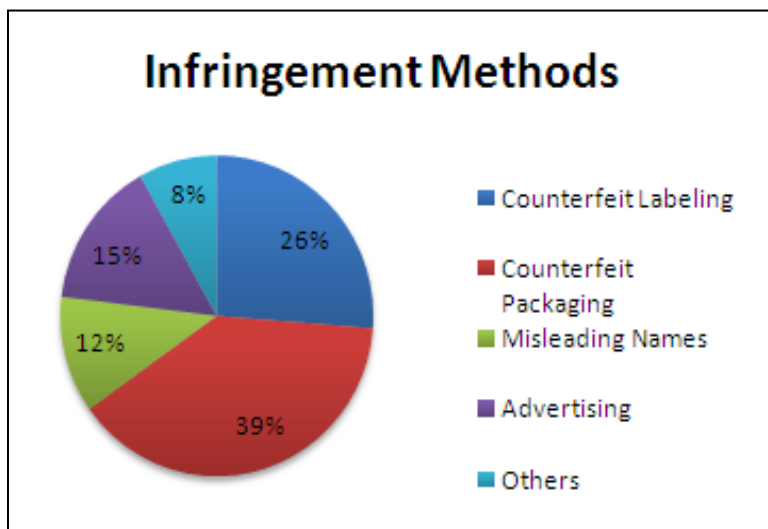
This field research discovered that fresh fruits, liquor, and packaged food products were the most susceptible to trademark infringement, typically in the form of counterfeit labeling and packaging. Examples discussed in product-specific Appendix 1 include some of the most famous U.S. consumer brands, such as Sunkist oranges, Washington apples, Jack Daniel's, Jim Beam, Tabasco, and Arm and Hammer. Counterfeits typically mimic products with high consumer brand recognition, though trademark violations also extend to industrial products like hardwood lumber where processors associate a name/brand with high quality.

B. Misleading claims

American agricultural and food products products enjoy a very strong reputation among Chinese consumers for high quality, unique taste, and food safety. The United States has become a favorite source of imported food products. Consequently, disreputable Chinese marketers use numerous tricks to intentionally mislead consumers into believing that their products are of U.S. origin. Here are the strategies most commonly found:

- *Counterfeit labels and packaging*

Counterfeit labels state or imply U.S. origin in the product name or description. According to this study, dried nuts and fruits have the highest frequency of counterfeit labels. For goods that have simple packages or limited anti-counterfeit measures, the entire consumer ready package is counterfeited.



- *Confusing/misleading names*

Sometimes agricultural products grown in China are of American species/varieties. Vendors will retain “U.S.” at the front of the product name to mislead the consumers into believing that the product was grown and harvested in the United States. American table grapes, sweet corn, fish, and ginseng are common examples. Another tactic is to create a brand name close enough to the name of a U.S. brand to imply a connection or confuse brand identification, such as Blue Belt Beer instead of Blue Ribbon. It is very common for Chinese manufacturers to include the U.S. national flag, a U.S. map, or other American symbols to infer U.S. origin. .

- *Misleading advertising and signage*

For loose produce, retailers commonly misidentify origin on point-of-sale advertising. For example, Chilean cherries and French apples as labeled as U.S. cherries and apples in order to inflate the price or attract consumers. The same is true with table grapes, plums and nectarines of unknown origin. Low prices and sales of out-of-season fruit are a common clue that these products are not truly of American origin.

- *Misleading Trademarks*

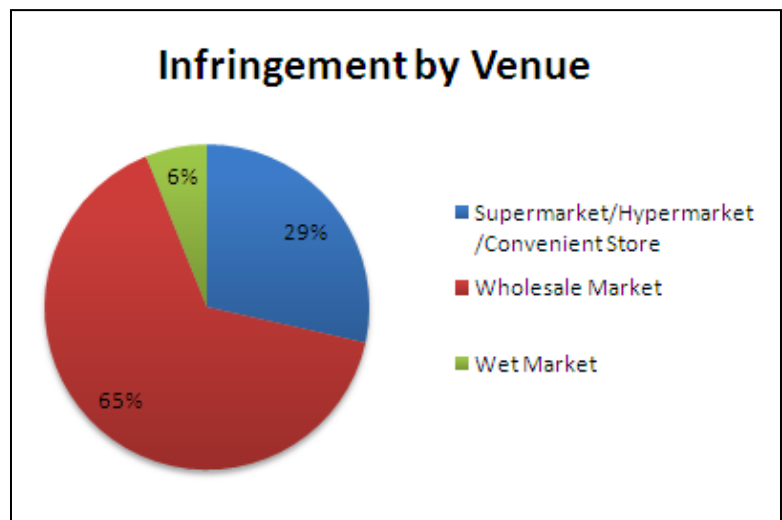
Chinese companies have been able to trademark generic products types, such as “angus” and “ale”. Though legally registered with the Chinese Government, this confuses consumers as to the nature of the product.

- *Others*

In some cases, products may legitimately come from multiple producing regions, but Chinese distributors list the final as of U.S. origin. American pecans, macadamia nuts, and hazel nuts are common examples.

C. Copyright Infringement

This study found a small percentage of IP infringement involving copyright issues, most of which involved technical information developed by U.S. industries. Examples of these are the meat cut diagram of United States Meat Export Federation (USMEF), the American Hardwood Export Council (AHEC) American hardwood species descriptions, and the National Hardwood lumber Association (NHLA) lumber grading rules. While such copying can at times benefit a company or association as a form of passive marketing, losing control of how Chinese entities use and describe a product can lead to confusion among users or consumers.



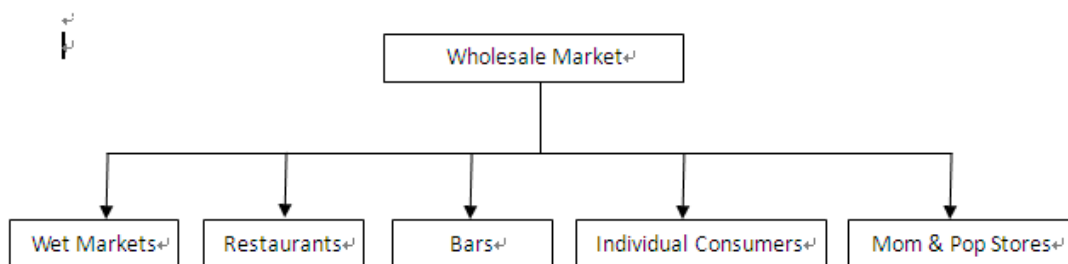
Common Sales and Distribution Points for Infringing Products

Wholesale markets accounted for 35% of the outlets visited but contributed 65% of the IPR violations

identified. Further research suggests most counterfeits seized by local AICs are at wholesale markets. Therefore, it is reasonable to focus on wholesale markets as the most common sales and distribution point for infringing products.

The number of multiple-product wholesale markets is more than 4,000 nationwide, in addition to many thousand product-specific markets. According to the China Agriculture Wholesale Market Association, 70-80% of the agricultural products consumed in cities are distributed through wholesale markets. Each vendor has its own product sources and clients, which are mostly small food service businesses, retailers, and some individual consumers. Within each market are crowded hundreds, if not thousands, of small vendors, each with a small booth or section of a big warehouse. Moreover, wholesale market vendors are poorly regulated. Through the wholesale market, counterfeit products flow to restaurants and bars, wet markets, small fruit shops, mom and pop stores, and directly to some individual consumers.

There are typically several product-specific wholesale markets in one city, including fruit, meat, seafood and grocery wholesale markets (which include dried nuts and fruits, seasonings, etc.). In larger cities, there are 2-3 wholesale markets of the same type located in different parts of the city. Wholesale markets are rated Grade I, Grade II, or Grade III, depending on size, with Grade I being the largest. Based on the data from this research, there is a negative correlation between market size and IPR infringing products. Thus, the smaller the market, the more counterfeit products it seems to carry.



Supermarkets and established retail stores accounted for 58% of the outlets visited, but only 29% of the observed product violations. Supermarkets exhibited relatively few IPR issues compared with wholesale markets and wet markets due to stronger AIC regulations and monitoring. Most of the violations found involved misleading claims not necessarily violations of the law, such as incorrectly claiming products were from the U.S in store signage. This type of concern was most common with fresh fruit and unpackaged products. Based on this field research, supermarkets were not shown to be free of IPR problems, but the situation is markedly better than with wholesale markets.

In general, very few U.S. products are sold at wet markets other than chicken feet and fruit. [Neighborhood fruit stores were considered a part of wet markets in this survey.] Fruit is generally sold at a fruit counter at a big wet market, an independent fruit store around the street corner, or by a small vendor selling from a tricycle. They attract consumers with low price and convenience. At the peak season, the survey identified Jiangxi oranges with Sunkist labels at 3 out of 5 small fruit stores within 200 feet of a Beijing wet market.

I. Recommendations

Once a product has developed a market and is well received by consumers, counterfeits and infringers will follow. While an unfortunate distinction arising of a successful marketing campaign, this axiom is largely true for any food product sold in China. Here are four top ways to combat IPR infringement and minimize its impact:

1. Educate Consumers and Officials

The importance of education cannot be overemphasized. Counterfeits and violations of IPR exist because of asymmetric information. Many U.S. products are new to Chinese consumers and language and culture pose a barrier.

U.S. companies/associations should provide as much information as possible to educate the consumers, distributors, and retailers. Information should explain a product's variety and availability and how it differs from those of different origins. Materials should specify the designated distributors, where to purchase the products, and most importantly, a telephone number to call to verify product authenticity.

It is also important to educate Chinese government officials charged with managing IPR issues, including AIC officials. Those that monitor distribution and retail markets for your product and CTMO officials in charge of trademark registration are most important.

2. Establish Mechanisms to Protect IP

Plan ahead to combat infringement! Legal means are available. Get legal counsel. Aggressive protection of varieties, trade secrets, patents, or trademarks forms the basis for producing a product and its brand value reduces ability for bad actors to make and distribute viable infringing/counterfeit products

U.S. companies/associations should establish a monitoring system for IPR issues. Once infringing products have been identified, cease and desist letters should be issued and the cases brought to the attention of AIC for enforcement. AIC rulings can also be used as strong evidence to sue the infringer for compensation. Explore all avenues to combat infringers.

U.S. companies/associations should also register their trademarks with CTMO. Unlike the U.S. trademark system, the first entity to register a trademark becomes the legal owner, not the first entity to use the trademark.

3. Tackle Key Distribution Points for Infringing Products

Combating infringements is a long and tough battle because there are many small vendors and both the manufacturers of the counterfeit products and the printers of the counterfeit labels often operate illegal underground operations. Attacking the key distribution point of infringement, most often the wholesale market, acts a disincentive for vendors to carry counterfeit products. If an AIC raid on products with counterfeit labels results in fines for offending retailers, the demand for the counterfeit products from other vendors will generally go down.

Open a dialogue with the management of wholesale markets by raising the issue of IPR infringement.

Make them understand it is illegal to sell labels containing registered trademarks and they may be criminal liability. It is more cost efficient for U.S. companies if wholesale market managers to monitor their own vendors. In cases in which wholesale markets continually ignore IPR infringements, cease and desist letters and AIC raids are obvious next steps.

4. Establish Certification Marks with Indicators of Geographic Origin

A large percent of the infringements identified by this research were misleading claims. As more American agricultural species/varieties become introduced to China, U.S. growers and exporters will face more competition from domestic Chinese growers of similar products. This has already happened in many industry sectors, including ginseng and oranges. Therefore, U.S. industries should consider certification marks or geographic indicators that represent the geographic location where the products are grown. The mark can help to differentiate authentic U.S.-grown products to consumers and inspectors.

The USDA China website has more helpful publications that address specific technical and legal issues: http://www.usdachina.org/US_Exporter.asp?functionID=11040104

- **IPR in China / Introduction to Trademark Registration in China**
- **IPR: What are Geographical Indications**
- **Protect your Trademark... before Someone else Trades Your Mark**
- **Protecting Plant Varieties in China: Alternatives**
- **Measures for Administration of Geographical Indication Signs Products**
- **Protecting Your Intellectual Property Rights**
- **Going to China?: Trademark your Intellectual Property Now!**

The U.S. Embassy IPR Toolkit also provides useful information for rights holders:

<http://beijing.usembassy-china.org.cn/ipr.html>

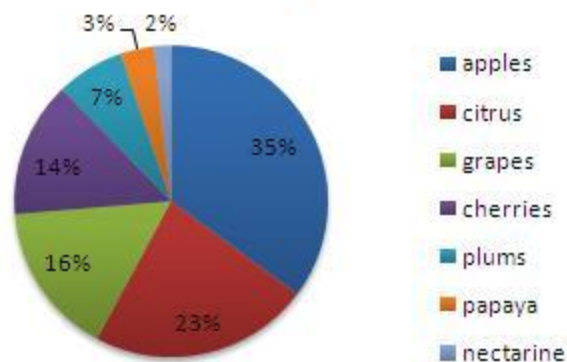
Appendix 1. Observed IPR Infringement by Products

Fresh fruit was the most frequently infringed upon product, accounting for one quarter of identified infringements. Packaged food products, dried fruits and nuts, beverages (alcohol, wine and beer) and health supplement were also under serious threat, accounting for 18%, 17%, 17%, and 12% of all infringements, respectively. Meat (7%), seafood (3%), and lumber (2%) had relatively lower rates of infringement.

A. Fresh Fruit

A wide arrange of American fruits are available in retail and wholesale outlets, including apples, oranges, pears, and table grapes. With strong popularity and high consumer awareness, U.S. fruits have encountered the most serious IPR infringement of any sector. These infringements include trademark infringements and misleading claims in the form of counterfeit labeling and packaging. Washington apples, Sunkist oranges, and California table grapes were the most frequently infringed products during the winter observation period.

Fruits Infringement by Product Category



The problem with counterfeit imported fruit is long-standing and well documented. Numerous reports are available regarding cases in which Chinese domestic fruits were labeled/packaged as imported and sold at much high prices. In addition to cases in the major cities of Beijing, Shanghai, and Guangzhou, many of the cases came from Nanjing, Wuhan, Daqing, Shenyang, and Jinan—second-tier cities that were not included in this research project. In 2002, the China State Administration of Industry and Commerce (SAIC) and the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) conducted a survey of major five cities in China. Thirty percent of the imported fruit sold on the market was found to be counterfeit, among which Sunkist oranges, California plums, and U.S. apples were at the top on the list (Source: chinanews.com.cn, March 6, 2002). FAS believes that the ratio of counterfeit to authentic imported fruit is likely the same or higher today, due to a greater variety of U.S. fruits with market access and more Western fruit varieties are being grown in China, including grapes, plums, oranges and apples.

1. Apples

Washington apples were among the first fresh fruits exported from the U.S. to China. They have become the target of infringement for their high brand awareness among the Chinese consumers. The most common method of infringement is to paste the “Washington” sticker, the trademark of the Washington Apple Commission, on local apples. Some co-op and individual U.S. company logos, such as Gee Whiz, have also been pirated.

These stickers are usually available for purchase at an extremely low price in any major wholesale market. In Shanghai, seven sheets with about 30-40 logos on each costs RMB1 (around \$0.15). Counterfeit packaging with the generic wording such “U.S. apples” and/or the U.S. national flag is also prevalent.





The vast majority of the infringing products found during this research were identified at the wholesale market and wet market level. In supermarkets, observed trademark infringements were rare, though mixing U.S. apples with apples from other origin was common. For example, apples with different labels and origins were put together in one basket and labeled as U.S. origin.

2. Citrus

Similar to Washington Apples, Sunkist is the most famous brand of U.S. oranges and has become the most infringed trademark in this sector. “Sunkist”, “Sun Pacific” and “Dole Navel” labels and

counterfeit boxes were available for purchase together at wholesale markets. These counterfeit boxes usually claim to be U.S. oranges or Flower Flag oranges (Flower Flag is a reference to U.S. national flag).

Most infringements at wholesale markets and wet markets involve putting an American brand logo, such as Sunkist, on oranges from Jiangxi (which have a distinctive color). At the fruit counter of one major supermarket in Chengdu, the top layer of oranges were authentic Sunkist oranges, the second layer were counterfeit.



3. Grapes

The U.S. table grape variety “red globe” was introduced and is now grown in China, which has recently increased the level of infringement in the table grape segment. Chinese-grown red globe grapes have become easy and convincing substitutes for

California red table grapes, though they lack the related production practices and food safety aspects that consumers are paying extra to receive. During a visit to the Shanghai Shanhua Fruit wholesale market, one vendor was openly transferring Shandong red table grapes into a bag claiming to be U.S. table grapes. In a Chengdu wholesale market, South African green table grapes were being sold U.S.

grapes. Plastic bags labeled “California table grapes” are widely available for purchase in one Chengdu fruit wholesale market.



4. Cherries

It is very common to see Chilean cherries marketed as U.S. cherries at both the wet markets and supermarkets during the winter, when American cherries are no longer in season. One Chilean cherry brand is called San Francisco, which may cause more confusion.

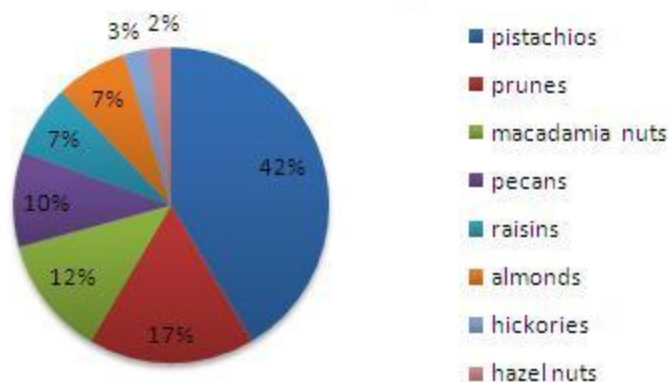
5. Plums and nectarines

Like cherries, winter is not the season to find authentic fresh U.S. plums and nectarines. However, nectarines and plums claiming to be of U.S. origin were both found in Chengdu and Beijing supermarkets. California plum stickers are available for sale at the Guangzhou Jiangnan market.

B. Dried Fruits and Nuts

Dried fruits and nuts are typically processed and repackaged by Chinese manufacturers. No direct trademark issues with dried fruits and nuts were identifiable. Rather, the most serious IPR problem with such foods is misleading claims of product origin. Many local manufacturers claim on their packages that their pistachios, almonds, pecans, prunes, macadamia nuts, hazel nuts, and cranberries are either specifically from California or from the United States. In the entire dried fruit and nut category, California pistachios had the most serious IPR issues.

Dried Fruit/Nuts Infringement by Product Category



Many large Chinese manufacturers import dried fruits and nuts from the United States. Among those in Guangdong and Fujian, it is popular to put “American” as a prefix on their product packages and promote origin in marketing materials.

An interesting phenomenon is that some manufacturers from Shanghai and Zhejiang, recently stopped making claims of U.S. origin on their packaging. This is partly because their own brands have earned more consumer recognition, supplanting false claims about product origin. Thus, in Shanghai supermarkets, fewer and fewer dried fruits and nuts are claiming U.S. origin, while in Guangzhou, Chengdu, and Beijing, it is still popular to claim “American” on dried fruits and nut packaging.

The field research determined that smaller manufacturers tend to use lower quality fruits and nuts from 3rd countries but still claim U.S. origin. Further research indicates many of these infringers are on the “black list” of manufacturers whose products failed quality tests by AQSIQ.



1. Pistachios

U.S. pistachios have long enjoyed a high reputation among Chinese consumers. Consequently, they have become easy targets for IPR piracy. In both the wholesale and retail markets, there were many instances of bleached local or Iranian pistachios claim U.S. origin. Many manufacturers put U.S. national flags or an image of the Statue of Liberty on their packages, reinforcing the false claims. Infringing pistachios accounted for nearly half of all infringements

found in the dried fruit and nuts category.

In a Guangzhou wholesale market, investigators found plastic bags for sale (RMB0.5, \$0.07) printed with the brand name of “Jiale” and the slogan “coming from California, the taste is better.” According to a news report from Shenzhen News Network (Jan.17, 2007), thousands of such bags have been used to repackage bulk pistachios from various origins for resale at supermarkets.

2. Almonds

Due to the U.S.'s dominant position as largest global producer of almonds and trade market share, there are few cases of mislabeling. Though the Chinese translation for almond, "Xin Ren," implies it is the pit of an apricot, the physical appearance of Chinese apricot pits looks quite different from that of U.S. almonds, so the consumers could easily tell the difference.



There is a type of Chinese nut from Xinjiang called Badanmu, which look very similar to the American almond. At Beijing Dongjiao Market, many dried fruit vendors sell Badanmu as "Xin Ren," mostly in-shell. Internet research indicates Badanmu is of the same species as U.S. almonds and has been growing in Xinjiang for thousands of years, though its production is currently quite small. In the Shanghai wet markets, some vendors have started to label Badanmu as "American Xin Ren" to borrow some of the prestige of the U.S. almond (see the photo).

3. Prunes

The Californian Prune Council (CPC) has confirmed that most of the products bearing CPC logos are authorized products. However, research found one product at the Chengdu wholesale market claiming to be Californian Black Prune. In English, the package is printed "West Plum," a literal translation of the Chinese word for prune.



4. Raisins

Imported U.S. raisins, like Sun Maid, are often stocked at the high-end supermarkets. However, they have less to fear from counterfeiters because most Chinese manufacturers claim their products are from Xinjiang, which is famous for its raisins in China and carries a high origin recognition.

5. Pecans

American pecans have become very popular in recent years. Most Chinese manufacturers are in Linan, a small town near Hangzhou, which is most famous for Chinese hickory. However, Mexico, South Africa, and Australia also export pecans to China, and Chinese domestic production of pecans has been growing. While a bag of "U.S. pecans" could contain pecans from multiple origins, no U.S. trademarks identified or U.S. origin claims were noted during this research.



- Macadamia nuts and hazel nuts

The Chinese translation of macadamia nut is "Hawaii nut," so naturally consumers think Macadamia nuts are from the United States. Actually, a significant quantity of macadamia nuts and hazel nuts are also grown and shipped from Australia. In both cases, it is common to see products inappropriately labels with U.S. origin.

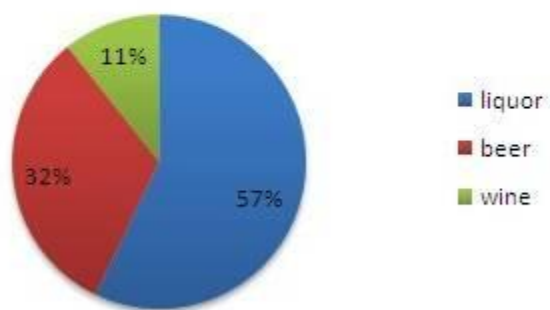
Products with multiple origins pose unique challenges in identifying their actual origin. One trader

said that even manufacturers and distributors are not always certain of the nuts' origin. However, since consumers prefer U.S. dried fruits and nuts, manufacturers and distributors normally lump everything under the "U.S." umbrella as standard practice.

C. Beverages

Due to high consumer brand name recognition, alcoholic beverages face some of the most extensive counterfeit problems and encounter serious trademark infringements. Liquor products face the most significant challenges, with well-known brands facing constant counterfeits and trademark infringement. While few individual U.S. wine brands have a profile high enough to encourage infringement, beer faces several hurdles. For example, a Chinese brewery registered "ale" as its trademark and some local breweries have tried to link their products with the Pabst Blue Ribbon name and marks.

Beverages Infringement by Product Category



1. Liquor

Liquor, including U.S. brands, are one of the most high-profile food items that face a counterfeiting threat, especially in bars. This threat applies to domestic and imported brands of liquor.

For example, the Xinhua Chongqing channel cited the Chongqing Alcohol Administration in estimating that 80% of the imported alcohol sold in the bars and KTV is counterfeit in that area. The name brand recognition and market penetration has made Jack Daniel's whiskey subject to many counterfeit and was cited in that report as one of the three most infringed products. Reports from Wenzhou, Haikou, Xuancheng, and Beijing all indicated that local AIC raids on bars and stores selling imported alcohol seized significant amount of counterfeits, including Jack Daniel's and Jim Beam. The bars were selling the counterfeit whiskey for high profit margins and usually consumers could not tell the difference as they mix the whiskey with soft drinks.



While this research did not touch upon bars and restaurants, it identified several bottles of fake Jack Daniel's and Jim Beam at the Chengdu wholesale market and Beijing Dongjiao Market; all had a different distributor printed on the label than the genuine product and sold at significant lower prices. For example, a poor Jack Daniels' counterfeit called "King Horse Jack" was found in a small wholesale market in Shanghai. The label and bottle looks roughly similar to Jack Daniel's label, but it had a fake name and fictitious distributor.

In the liquor category, such obvious fakes are much less common than just a few years ago. In part due to a more educated and

knowledgeable customers, more and more counterfeits must now look exactly as the authentic products so as to continue to dupe unwitting customers. Many companies expend serious effort to maintain control over used bottles in order to prevent counterfeit alcohol from being sold in real bottles. Used bottles of Jack Daniel's and Jim Beam sell for around \$1.00-2.00 each on Taobao, the largest online consumer-retailer in China. These bottles form the basis for much of the counterfeit market.

2. Wine

In most of the retailer/wholesale markets investigated, U.S. wine had very limited presence and low brand name recognition. The U.S. presence was highest in established foreign and large domestic retailers, where IPR protection is greatest. Consequently, the study found no instances of IPR violations against U.S. wine, though some were observed against market leader France. As American wine gains a high consumer awareness that rivals French wine, it is also likely to become the target for piracy.

Though the investigation did not turn up any cases of wine IP infringement, the U.S. wine industry has observed some and there are several cases of disputes over U.S. trademarks. The California Wine Institute (CWI) notes that its distributors found fake California wine in 2009 at Chengdu Tangjiuhui, China's largest domestic food show. Due to the large trade in imported bulk wine, issues related to the labeling of bulk wine are also of concern. Importers of bulk wine into China, often mix different origins together. Accurate country of origin labeling will be important in the future as the U.S. begins to build stronger brand and country of origin recognition in China.

3. Beer

It was initially thought that U.S. beers would not be imitated in the local market due to the low market penetration of imported beer in China and significant number of domestically brewed foreign brands. However, there are several issues that impact imported beer.

First, China has granted a trademark for the use of the term "Ale." The China Trademark Office (CTMO) website shows that "Ale" in Chinese has become its registered trademark of the Beijing Na Ale Brewery. This has serious implications for imported beers that use the word ale as a descriptor for a type of beer rather than a trademark. Market research suggests that Beijing Naale Brewery is a legal company, though it claims "authorization by the U.S. Ale Development to produce a "stout" beer" (as seen in the adjacent picture). Its bottle also correctly claims, in Chinese, that "Na-Ale" is a registered trademark. A number of different canned beer products were found in Beijing produced by the same company.



In a Chengdu grocery wholesale market, the field research found a "black beer" produced by the Usa Blue Belt Group (Asia) Limited. This is a clear reference to the Pabst Blue Ribbon brand. Pabst Blue Ribbon was one of the first U.S. beers introduced into China and, though no longer sold, the brand has a life of its own. There have been many beer companies trying to capitalize on the "blue" and "ribbon" names, though versions of the brand have also



been seen on bottled water and consumer health care products.

4. Juice

The field research did not identify any IPR infringements against U.S. juice brands.

D. Packaged Food Products



Store investigations and online searches uncovered various packaged food products with IPR issues, including frozen and canned corn, green peas, sauces, seasonings, baking soda, potato chips, infant formula, bakery items, and pet foods. Though some of the products that had IPR violations were targeted to the food service sector, others were sold as consumer-ready products. Some of the problems were direct trademark infringements, such as counterfeit Tabasco sauce. However, more often infringements were in the form of misleading claims, designed to intentionally mislead the consumer

into believing the products were from imported from the United States. As a general rule, the more famous the brand/product, the more counterfeit products there were to imitate them.

At the top on the list is Tabasco sauce. At Chengdu Fuqinglu seafood market, the field investigation found a counterfeit bottle of “original” Tabasco sauce that had very low print quality on the package and the distributor’s name was not the official one. There are numerous reports on the Internet of fake Tabasco products being confiscated by local AICs in Tianjin, Zhengjiang, Wuhan, and Shanghai. All of the confiscated fakes were sold at local wholesale markets.



Counterfeit Arm and Hammer baking soda is another frequently infringed product that was identified in almost all wholesale markets visited. There were even several versions of counterfeits, each using a slightly different name, such as “Arm and Hatchet”, “Sidefu Flavor”, and “Futou” (Hammer in Chinese). Counterfeit baking sodas often described the manufacturer as “Simplot” or “Del Monte”.

Cookies and other snack foods imported from U.S., such as Pepperidge Farms and Betty Crocker, are available at a limited number high-end supermarkets. However, while misleading country of origin claims are not uncommon on Chinese made bakery goods, no obviously fake products were found. An example is the a bakery/confectionary product sold in Shanghai called Mankattan, which uses the image of the U.S. national flag extensively on its product packages and promotion. There is no connection to the United States for the product, a name close to Manhattan and use of U.S. imagery is a convenient marketing tool.



The United States is also well-known in China for sweet corn. Thus, it is very common to see sweet corn from many different origins labeled as

“American”. The largest volume of this corn is grown in China, though sometimes of American seed varieties. For example, one brand called “Supreme American Chef” depicts an Western-looking chef, but “whole kernel corn” is misspelled as “Whate Keinet Cain.” The Supreme American Chef brand was widely available in all wholesale markets visited during the investigation and features a complete product line, ranging from sausage, baking soda and cheese powder to various sauces. Supreme

American Chef is owned by a company in Shenzhen, but is a Chinese-made “U.S.” brand.



A Guangdong infant formula manufacturer was more creative in its infringement, but the real story came out during the industry-wide melamine scandal in 2008-09. On the product package, it claimed Scient (Guangzhou) products are authorized by Scient U.S.A., the U.S. trademark holder. Further, it claimed to use 100% imported ingredients and incorporated a U.S. flag design in its logo. In June, 2009 during the melamine scandal, the product was reported by the government to

contain melamine and was reported by the press to have been sourced from Shanxi and Helongjiang, not the United States. After further press investigation, Scient U.S.A. was determined to be a shell company registered in California that has no history of selling baby formula. There was an uproar among Chinese consumers that felt cheated by paying extra for the American brand advertising itself to be of 100% imported infant formula. Six months after the case, however, the field investigation still found the product available in major supermarkets in Shanghai and Chengdu. It is unclear if the company now uses exclusively U.S. ingredients.

E. Meat Products

Due to the nature of most meat products exported from the United States to China, there are few IPR concerns. In addition to the larger shipment size and wholesale/direct to processor shipment characteristics, many U.S. meat products are at very competitive prices. This confirms that the incentive for making counterfeit products is illegal profits; when there are no premiums for American products, there are few reasons to fake products.

At a Shanghai meat wholesale market, field investigators found meat marketed by a company called Dalian Angus Catering Development. It claims to be the largest Angus beef breeding operation in Northeast China and has registered “Angus” as its exclusive trademark (Trademark certificate No. 3631895 received from CTMO in 2005). Their products are available in major supermarkets (see the logo at right).



F. Seafood

In the course of this field research, U.S. seafood appeared to experiences few IPR problems. The problems with seafood also were mostly related to misleading or confusing country-of-origin claims. In fact, several Canadian seafood products were labeled as from the United States to increase their value. In a typical case in Beijing, investigators found a fish marketed as “American red”, which turned out to be U.S. red drum raised in Guangdong Province. In another case, “American red dried sea cucumber” was suspected to be not a sea cucumber at all, given

its extremely low price of around RMB200/500g (around USD30).

G. Lumber

Field investigations also suggest that American lumber company logos, such as American Lumber Company and Baillie Lumber Company, are copied in the Chinese wholesale lumber market. These brand names are widely recognized by Chinese lumber buyers for their consistent and high quality. Industry experts note that legitimate buyers of lumber from these two companies have found these and other fake logos painted on bundles or loose piles of 3rd country or U.S. hardwood sourced from other companies for resale.

H. Ginseng

The Ginseng Board of Wisconsin (GBW) successfully stopped trademark infringements of the GBW seal through an AIC campaign, after which very few infringements could be found on the market. During this field research, only one domestic company was using the GBW seal on its product barrel and claiming its ginseng roots were from the United States. GBW took quick action by issuing a cease and desist letter to both the manufacturer and the retailer.



While there is little misuse of GBW trademarks, the U.S. ginseng industry is still challenged by false product claims and associations. Many products still claim to be American ginseng and put the U.S. flag or a map of the U.S. on their packages to mislead consumers into believing they are of U.S. origin. In other cases, manufacturers boldly claim that their products are specifically from Wisconsin. For example, a repeat infringer of the GBW seal continues to claim on its product flyer that all its ginseng products are from Wisconsin. It is difficult for the U.S. industry to take action against these claims, as it is difficult to prove or disprove product origin after it has been processed and combined with other ingredients.

The WGB case is examined in the next section, Annex 2.

Annex 2: Wisconsin Ginseng Board Case Study

In the early 1990s, the Ginseng Board of Wisconsin (GBW) designed a unique trademark to denote that packages bearing the trademark contained ginseng grown in the State of Wisconsin. In March of 1993, the mark was officially registered at the U.S. Patent and Trademark Office as a Certification Mark. Shortly after its U.S. filing, GBW took steps to file its mark in China. In May of 1993, the mark was approved by the China Trademark Office (CTMO) as a “common mark” because, at that time, certified trademarks were not an option in China (certification marks became an option in early 1994).



From the mid 1990s to the early 2000s, more and more ginseng products bearing the GBW seal found on the market were not authentic Wisconsin ginseng. At its peak, infringing products could be found

in any Chinese supermarket. Infringers included the leading health supplement companies in China along with many small regional players. The U.S. industry took actions like issuing cease and desist letters and communicating with the infringers, but with little effect.

The turning point came in March 2006, when AIC from Fujian Province Chunchang County informed the Ginseng Board it had confiscated 10 lots of ginseng bearing the GBW seal. Since then, more than 20 AICs in China have confiscated different brands of ginseng products incorrectly bearing the seal, including Eagle, Wanji, Xsu's Nanjing, etc. The infringers all contacted the GBW's China counsel seeking settlement. The AIC involvement has successfully stopped the infringements and GBW sued many infringers based on the AIC rulings. The GBW won all the cases or reached settlements in its favor.

Meanwhile, GBW worked closely with trademark agencies in China to fight against various trademark oppositions/cancellations filed by infringers. By December 2009, GBW received two new common trademark registrations which include the text "Ginseng Board of Wisconsin." (In its original mark, that text was not allowed because a geographic name was not considered a distinguishing characteristic.)

GBW has now established a quick-response mechanism for infringements. Once an infringing product has been detected, a cease and desist letter is issued. A lawsuit follows if the infringement is not corrected. This mechanism and the past work of the GBW have been effective, as there are relatively few direct infringements in the market today. However, GBW still faces two major challenges:

- Though counterfeit GBW seals have been removed from the market, many Canadian and Chinese growers of American ginseng varieties still claim on their packaging and promotional materials to be American and/or Wisconsin ginseng products and they still utilize U.S. national flags or other symbols to mislead consumers. It is very difficult for GBW to take action against these cases.

Two universities are currently researching whether an identifying "finger print" can be identified for Wisconsin-grown American Ginseng.

- The GBW seal has been registered as a common trademark in China, but by its nature, it is a certification mark and has been registered in the United States as such. If GBW would like to re-apply for its certification mark, it has to face an approximately six months publishing period without any protection.

GBW is considering strengthening its current mark through use of a China GI (Geographic Indicator) initiated by AQSIQ and has also given consideration to pursuing "Well Known trademark" status.

Annex 3: Field Research Methodology

From September 2009 to February 2010, 48 retail and wholesale markets in Shanghai, Guangzhou,

Beijing, and Chengdu were surveyed and thousands of products investigated. This research was conducted by M.Z. Marketing Communications Co., Ltd. on behalf of and in consultation with the USDA Office of Agricultural Affairs Beijing. A focus was placed on fresh fruit, dried fruit and nuts, packaged products, certain health supplements, beverages, meat, and seafood products. Results from this limited market survey were designed to give a snapshot of the magnitude and nature of the IPR infringements against U.S.-originated agricultural/food products in China.

The following items were specifically investigated:

- Fruit: Apples, Cherries, Grapes, Oranges, Plums
- Dried fruit/nuts: Prunes, Raisins, Almonds, Pistachios, Pecans, Macadamia nuts
- Branded products: Beverages: Wine & Beer, Alcohol, Juice
 Bakery/Confectionary: Cookies, Muffins, Snacks, Chip and Pretzels
 Other Packaged Products
 Frozen food: Pizza, Canned Products, Corn, Green Peas, Lentils, Meat and Poultry, Seafood

Representative samples of hypermarkets, supermarkets, convenience stores, wholesale markets, and wet markets in each of the four subject cities were chosen:

- One foreign-invested hypermarket
- One local hypermarket
- One standard supermarket
- One convenience store
- One fruit wholesale market
- One grocery wholesale market (if available)
- One wet market

To get a more comprehensive and accurate picture, meat and seafood markets and additional retail outlets were added during the actual field research. In total, 48 outlets, averaging 12 per city, were investigated. Seventeen outlets were wholesale markets for various products like fruit, groceries, meat, and seafood; the balance were retail stores and wet markets. In Chengdu, several restaurants and bars were also surveyed. Field research was supplemented with online research and informal interviews with Chinese representatives of U.S. industry associations.

The first field research was conducted in Shanghai. After consultation the FAS-China IPR Office about the initial results, the remaining field surveys were completed. The same research model was used in Beijing, Guangzhou, and Chengdu. Chengdu was also selected as a representative of “second tier city,” as it is a major commercial center for Western China. ATO Chengdu provided assistance based on its local experience.

The following criteria were used as identifying characteristics for possible IPR violations.

Physical appearance of the products

- Substitutes often look different, though sometimes only subtly, than the authentic

product. For example, Jiangxi oranges have a different, distinctive shape and more reddish color than real Sunkist oranges.

Availability

- U.S. fruits are only available during certain seasons. During the winter in China, you would not expect to see fresh fruit from the U.S., such as cherries, nectarines, and plums.

Packaging

- Counterfeit product packaging tends to have lower-quality printing. Some counterfeit products contain subtle changes to the original product name, like Arm and Hammer becomes Arm and Hatchet.

Distributor

- Counterfeit products often list distributor information on their packaging that is not consistent with the designated distributors of the authentic products. The names, addresses, and contact information are all fictitious.

Pricing

- Counterfeit products tend to have abnormally low prices compared to the normal market price in order to attract business.

Significant efforts were made to identify counterfeits, including consulting with many U.S. industry associations and companies to verify product information. However, due to the complicated nature of this market survey and the need to prevent suspicious vendors from denying access, some IPR violations may have been missed. Additionally, the quality of some counterfeit or counterfeit packaging is so high that identification can only be made by taste. Moreover, some counterfeit products may be hidden in the back of the store and remain generally unavailable for walk-in consumers. Field research into IPR infringement has its limitations, and this report is meant only to be descriptive of what could be found in the 48 investigated outlets.